



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

SEP 28 2004

REPLY TO THE ATTENTION OF  
(AE-17J)

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

David E. Eriksen, President  
Viking Paints, Inc.  
100 West 78<sup>th</sup> Street  
Richfield, Minnesota 55423

Dear Mr. Eriksen:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves violations at Viking's Richfield, Minnesota facility, CAA Docket No. CAA-05-2004 0054. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on SEP 30 2004.

Pursuant to paragraph 30 of the CAFO, Viking must pay the civil penalty within 30 days of SEP 30 2004. Your check must display the case docket number, CAA-05-2004 0054, and the billing document number, 056004001.

Please direct any questions regarding this case to Mony Chabria, Associate Regional Counsel, (312) 886-6842.

Sincerely yours,



Linda Rosen, Chief

Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

cc: Peder Larson (w/enclosure)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

Viking Paints, Inc.  
Richfield, Minnesota

Respondent.

) Docket No. CAA-95- 2004 0054  
)

) Consent Agreement and Final  
) Order  
)

US ENVIRONMENTAL  
PROTECTION AGENCY  
REGION V

04 SEP 30 AM 1:54

RECEIVED  
REGIONAL OFFICE  
CLEVELAND

CONSENT AGREEMENT AND FINAL ORDER

I. JURISDICTIONAL AUTHORITY

1. This is a civil administrative action commenced and concluded simultaneously pursuant to Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination, or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.1(a)(2), 22.13(b), and 22.18(b).

2. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), brings this administrative action seeking a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

3. The Respondent is Viking Paints, Inc. (Viking or Respondent), a corporation doing business in Minnesota.

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

## II. STATUTORY AND REGULATORY BACKGROUND

4. Under Section 183(e) of the Act, 42 U.S.C. § 7511b(e), the Administrator of U.S. EPA promulgated regulations establishing requirements regarding the manufacture of certain consumer or commercial products, the use of which may result in the release of volatile organic compounds (VOCs).

5. Pursuant to Section 183(e) of the Act, 42 U.S.C. § 7511b(e), on September 11, 1998, U.S. EPA promulgated National VOC Emission Standards for Architectural Coatings at 40 C.F.R. Part 59, Subpart D (Architectural Coatings Standards).

6. The Architectural Coatings Standards apply to each "architectural coating," as that term is defined at 40 C.F.R. § 59.401, manufactured on or after September 13, 1999 for sale or distribution in the United States.

7. The Architectural Coatings Standards, at 40 C.F.R. § 59.401, define "manufacturer" as a person that produces, packages, or repackages architectural coatings for sale or distribution in the United States.

8. The Architectural Coatings Standards, at 40 C.F.R. § 59.405(a)(2), require each manufacturer and importer of any architectural coating subject to Subpart D to provide on the label or lid of the container in which they sell or distribute the coating, a statement of the manufacturer's recommendation regarding thinning of the coating.



9. The Architectural Coatings Standards, at 40 C.F.R. § 59.402(a), require each manufacturer and importer of any architectural coating subject to Subpart D to ensure that the VOC content of the coating does not exceed the applicable limit in Table 1 of Subpart D.

10. The Administrator of U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation, with a maximum of \$220,000, for violations of the Architectural Coatings Standards that occurred between January 31, 1997 and March 15, 2004, and may assess a civil penalty of up to \$32,500 per day for each violation, with a maximum of \$270,000, for violations that occurred on and after March 15, 2004, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, as amended at 69 Fed. Reg. 7121 (February 13, 2004).

### **III. FACTUAL ALLEGATIONS**

11. Viking owns and operates an architectural coating manufacturing facility at 100 West 78<sup>th</sup> Street, Richfield, Minnesota.

12. Viking manufactured and distributed architectural coatings between September 13, 1999 and December 31, 2003, including, but not limited to, those listed in Table A. These coatings are recommended for field application to stationary structures and their appurtenances.





Table A

| Coating                            | VOC Content<br>(g/L) |       | Manufactured in: |      |      |      |
|------------------------------------|----------------------|-------|------------------|------|------|------|
|                                    | Actual               | Limit | 1999/<br>2000    | 2001 | 2002 | 2003 |
| Coustic Coat                       | 4                    | 250   | X                | X    | X    | X    |
| Porch and Deck Enamel              | 461                  | 380   |                  |      | X    |      |
| Forrester                          | 613                  | 550   | X                | X    | X    | X    |
| Housepaint Primer                  | 472                  | 350   | X                |      |      |      |
| Polywall Foundation Coating FC-STD | 602                  | 600   | X                | X    | X    | X    |
| Polywall Foundation Coating STD    | 633                  | 600   | X                |      |      |      |
| Polyurethane Seal                  | 483                  | 450   | X                | X    | X    | X    |
| Polyurethane Gloss Finish          | 475                  | 450   | X                | X    | X    | X    |
| Polyurethane Satin                 | 460                  | 450   | X                | X    | X    | X    |

13. Since September 13, 1999, Viking has manufactured and distributed "architectural coatings," as defined in 40 C.F.R. § 59.401.

14. Viking did not provide proper thinning recommendations on the labels or lids of the containers for "Coustic Coat," "Forrester," "Housepaint Primer," "Polyurethane Seal," "Polyurethane Gloss," and "Polyurethane Satin."

15. The VOC content of "Porch and Deck Enamel," "Forrester," "Housepaint Primer," "Polywall Foundation Coating FC-STD," "Polywall Foundation Coating STD," "Polyurethane Seal," "Polyurethane Gloss Finish," and "Polyurethane Satin" exceeded

the applicable VOC content limit identified in Table 1 of Subpart D, 40 C.F.R. Part 59.

16. Viking did not submit exceedance fees for the production of any of its architectural coatings by March 1 following the calendar year in which the coatings were manufactured or imported.

17. Viking did not submit tonnage exemption reports for the production of any of its architectural coatings by March 1 following the calendar year in which the coatings were manufactured or imported.

18. On March 29, 2004, U.S. EPA issued a Finding of Violation to Viking.

#### **IV. VIOLATIONS**

19. As set forth above, Viking failed to provide a statement of its recommendation on thinning on its containers of several of its architectural coatings, constituting a violation of 40 C.F.R. § 59.405(a)(2) and Sections 183 and 111(e) of the Act, 42 U.S.C. §§ 7511b and 7411(e).

20. As set forth above, Viking exceeded the VOC content limits for several of its coatings without paying exceedance fees or submitting tonnage exemption reports, constituting a violation of 40 C.F.R. § 59.402(a) and Sections 183 and 111(e) of the Act, 42 U.S.C. §§ 7511b and 7411(e).

**V. STIPULATIONS**

21. Viking admits the jurisdictional allegations and neither admits nor denies the factual allegations described herein.

22. Viking consents to the issuance of this CAFO and the assessment of a civil penalty, as outlined in Section VI of this CAFO.

23. Viking consents to all of the terms and conditions in this CAFO.

24. Viking waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c).

25. Viking waives its right to contest the allegations in this CAFO, and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

26. Viking certifies that it is complying fully with the Architectural Coatings Standards at its coating manufacturing facility in Richfield, Minnesota.

27. Viking and U.S. EPA agree that settling this action without further litigation, upon the terms of this CAFO, is in the public interest.

**VI. CIVIL PENALTY**

28. Pursuant to Section 113(e) of the Act, 42 U.S.C. § 7413(e), in determining the amount of the penalty assessed, U.S. EPA took into account (in addition to such other factors as

justice may require), the size of Viking's business, the economic impact of the penalty on Viking's business, Viking's full compliance history and good faith efforts to comply, the duration of the violations, payments by Viking of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violations.

29. Based on an analysis of the above factors, including Viking's cooperation, and prompt return to compliance, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$39,035 (Thirty-nine Thousand Thirty-five Dollars).

30. Viking must pay the \$39,035 civil penalty plus interest in installments due to the U.S. EPA within 30 days, 12 months, and 24 months from the effective date of this CAFO, on the following schedule:

| <u>Payment Due Date</u>       | <u>Penalty</u> | <u>Interest</u> | <u>Payment Due</u> |
|-------------------------------|----------------|-----------------|--------------------|
| 30 days from effective date   | \$13,035       | \$0             | \$13,035           |
| 12 months from effective date | \$13,000       | \$260           | \$13,260           |
| 24 months from effective date | \$13,000       | \$130           | \$13,130           |

Each payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," in accordance with paragraphs 31 and 32 below, within the schedule set forth above.

31. Viking must send each check to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

32. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany each payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Mony Chabria, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3509

33. This civil penalty is not deductible for federal tax purposes.

34. If Viking does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The

validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

35. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C.

§ 3717. Viking will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Viking will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

#### **VII. GENERAL PROVISIONS**

36. This CAFO constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to Sections 111(e) and 113 of the Act, 42 U.S.C. §§ 7411(e) and 7413, for the violations alleged in Section IV of this CAFO. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Viking arising from the violations alleged in this CAFO or liability related to other violations of the Act. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by U.S. EPA, and it is the

responsibility of Viking to comply with such laws and regulations.

37. Nothing in this CAFO restricts U.S. EPA's authority to seek Viking's compliance with the Act and other applicable laws and regulations.

38. This CAFO does not affect Viking's responsibility to comply with the Act and other applicable federal, state, and local laws and regulations.

39. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Viking's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

40. The terms of this CAFO bind Viking, its officers, directors, servants, employees, agents, successors, and assigns, including, but not limited to, subsequent purchasers.

41. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

42. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO.

43. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.





44. This CAFO constitutes the entire agreement between the parties.

**U.S. Environmental Protection Agency,  
Complainant**

Date: 9/24/04

By: 

Stephen Rothblatt, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)

**Viking Paints, Inc.,  
Respondent**

Date: 9-22-04

By: 

Name: DAVID E. ERIKSEN

Title: PRESIDENT

**CAA-05- 2004 0054**

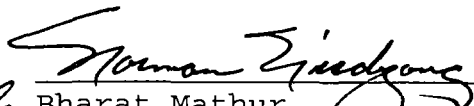
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CONSENT AGREEMENT AND FINAL ORDER  
Viking Paints, Inc., Richfield, Minnesota  
Docket No. **CAA-05- 2004 0054**

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

Dated: 9/28/04

  
for Bharat Mathur  
Acting Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590



CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number

CAA-05-2004 0054 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Viking and Viking's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

David E. Eriksen, President  
Viking Paints, Inc.  
100 West 78<sup>th</sup> Street  
Richfield, Minnesota 55423

Peder Larson  
Peder Larson & Associates, PLC  
5200 Willson Road, Suite 150  
Minneapolis, MN 55424

US ENVIRONMENTAL  
PROTECTION AGENCY  
REGION V

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RECEIVED  
REGIONAL HEARING  
CLERK

on the 30<sup>th</sup> day of September, 2004.

Shanee Rucker  
Shanee Rucker  
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 1558 5984

